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DUI UPDATE

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2020 APAAC ADMINISTRATIVE PROFESSIONALS CONFERENCE

DUI and Traffic Updates, Fun Facts & Reminders



Governor Doug Ducey

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SESSION CONTENT

- DUI/Traffic Hot Topics & Fun Facts
- A Few Quick Legal Updates
- A General COVID Update
- Trivia

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TRIVIA

- True or False?
- Officers in Arizona have made a DUI arrest where the suspect blamed his self-driving car?

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TRUE



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DUI Statute 28-1381(A)(1)

It is unlawful for a person to

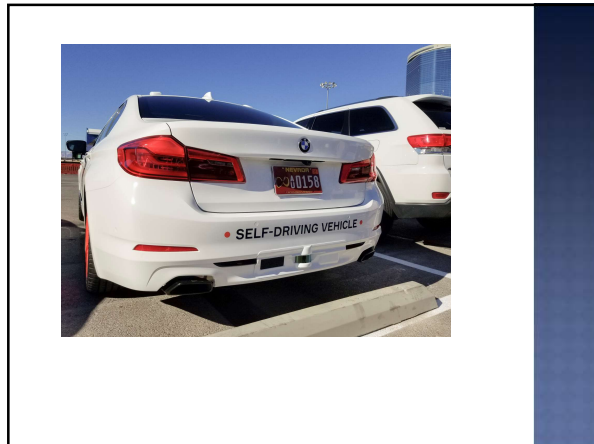
- **drive** or be in **actual physical control**
- a vehicle
- within this state
- while under the influence of intoxicating liquor, any drug, a vapor releasing substance, or any combination thereof if impaired to the slightest degree.

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LEGAL ISSUES FOR SELF-DRIVING CARS

- ◉ DUI - is this driving?
- ◉ Is the person in control for APC?
 - May be confusing for the juries
- ◉ Civil personal injury cases - who is at fault?
 - The "driver"
 - The car company
 - The person/vehicle hit
 - Someone/something else
- ◉ Insurance considerations

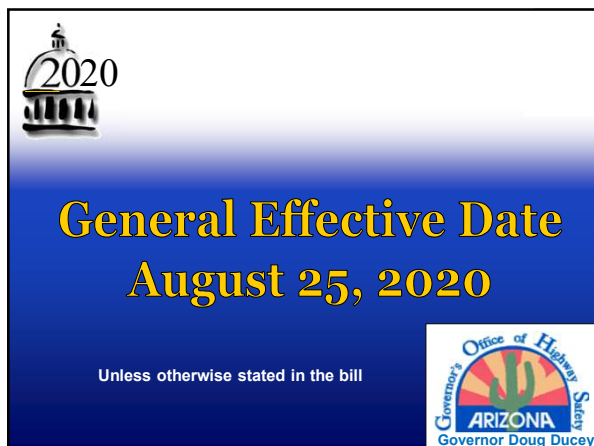
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"Texting" While Driving

HB 2318

- Prohibits operating motor vehicles on a street or highway (unless parked or stopped) if the person:
 1. Physically holds or supports with any part of the body
 - a) a portable wireless communication device except with earpiece, headphone device or wrist-worn device to conduct voice-based communication;
 - b) or a stand-alone electronic device;

**Effective - Now - emergency clause
Amends ARS § 28-672; 28-963, 28-3164 & 28-3312; adds 28-914

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"Texting" While Driving

HB 2318

2. Writes, sends or reads any text-based communication (text, instant message, e-mail or internet data) excluding:
 - a) voice-based communication to direct writing, sending, reading, etc. any text-based communication; &
 - b) hands free GPS; navigation or device used for obtaining motor vehicle information or information related to driving a motor vehicle.

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"Texting" While Driving

HB 2318

The following are exempt:

- Hand-free devices embedded in motor vehicles
- Authorized emergency, law enforcement or probation vehicle operators if using the device while acting in an official capacity
- Licensed FCC operators.

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"Texting" While Driving

HB 2318

Exemptions continued:

- Operators using 2 way radios or private land radio systems while performing work-related duties if operating fleet vehicles or possessing a CDL
- Operators using portable wireless communication devices
 1. To report illegal activity/summon help
 2. Affixed to vehicle to relay info during operator's job duties between operator & dispatcher or digital network or software application device.

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"Texting" While Driving



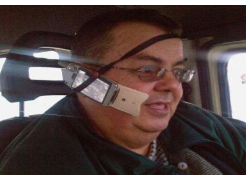
HB 2318

An officer who stops a vehicle for a violation may not:

- Take possession or inspect the portable wireless communication device unless otherwise authorized by law; and
- Issue citations before Jan. 1, 2021. May only issue a warning

voids all county, city, & local regulations beginning January 1, 2021.

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HANDS FREE CELL PHONE

Get more from 2therd.com

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"Texting" While Driving - 28-693


HB 2318

Prohibits drivers from:

- Watching videos or movies except data related to navigation, vehicle info or driving info
- Recording or broadcasting videos except for continuously recording or broadcasting videos within or outside the vehicle

No delayed enforcement/citation date. [Violation code 28-693.]

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"Texting" While Driving & 28-672

HB 2318

- Adds this section (28-914) to the violations included in 28-672 (causing serious physical injury or death by a moving violation).
- This section does not have the delayed enforcement/citation date.

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TRIVIA

In last year's presentation, which product was mentioned as being abused to get high?

- A. Imodium
- B. Dishwashing detergent
- C. Tylenol
- D. Old English furniture polish
- E. None of the above

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IMODIUM

- It is an opioid
 - only a tiny amount makes into the blood stream with regular use
- People will take extremely large doses 200 mg (100 pills)
 - To get high (euphoria)
 - To self-treat addiction to painkillers
- Risks
 - Depressed breathing & heart rate
 - Paralyzed intestine
 - Liver dysfunction
 - Depressed central nervous system



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Personal Delivery Devices

SB 1305

- Redefines personal delivery "device" (PDD)
- Treats/regulates them like pedestrians
- PDD must yield to, not obstruct right of way or unreasonable interfere with other traffic, including pedestrians; must display lights at night & markings
- Excluded from definition of "vehicle"

****Effective - August 31, 2020**
 Amends ARS § 28-667

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Personal Delivery Devices

SB 1305

- Limits device speed to a) up to 12 mph in pedestrian area; up to 20 miles per hour on the side or shoulder of a highway in a non-pedestrian area.
- Permits local authorities to establish a min/max speed of 7 – 17 mph in a pedestrian area.

**Effective - August 31, 2020
Amends ARS § 28-667

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Personal Delivery Devices

SB 1305

- When it is operated by an agent outside the scope of the office or employment, the agent is the operator of the device. If operated within the scope, the business entity is the operator.

**Effective - August 31, 2020
Amends ARS § 28-667

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Justice Court; Jurisdiction; Crimes

HB 2230

- Adjusts justice court jurisdictions to include misdemeanors and some felonies occurring on the boundary of 2 or more precincts or w/ 1 mile of the boundary.
- If a traffic ticket is filed in the wrong precinct that is on the boundary or 2 or more precincts, or within one mile of the boundary, the case may be transferred to the correct precinct if in same county.

**Effective - December 31, 2020
Amends ARS § 28-2414

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TRIVIA

- Which of these can an officer generally not testify about in an Arizona DUI trial?
- A. The Preliminary Breath Test (PBT)
- B. An opinion that the defendant was impaired
- C. That the defendant asked to speak to an attorney?
- D. None of the above
- E. All of the above

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TRIVIA

- Which of these can an officer generally not testify about in an Arizona DUI trial?
- A. The Preliminary Breath Test (PBT)
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- C. That the defendant asked to speak to an attorney?
- D. None of the above
- E. **All of the above**

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CASE LAW UPDATES

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UPDATE FROM LAST YEAR

Kansas v. Glover, 140 S.Ct. 1183 (2020).



- A traffic stop conducted after police run a vehicle's plate and discover the registered owner has a revoked license is reasonable under the 4th Amendment
- Unless officer has information indicating the owner is not the driver.

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STOP OF VEHICLE: REVOKED LICENSE (REMINDER)

- Reasonable suspicion exists to stop when an officer discovers owner of vehicle has a suspended license.
- Does not matter if officer could not see driver clearly enough to identify him/her as owner.
- Officer need not rule out innocent explanations for the conduct.

State v. Turner, 243 Ariz. 608 (App. 2018).

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DETENTION AT A TRAFFIC STOP

- Because continuation of original civil traffic stop (speeding) was consensual & reasonable, there was no 4th Amendment violation.
 - After warning was issued, defendant was asked to answer additional questions & agreed.
 - No suggestion officer threatened, intimidated or coerced Defendant
- The resulting search was also consensual & lawful
 - Defendant orally agreed to search of his car & signed a Spanish-language DPS consent to search form.

State v. Angulo-Chavez, 1 CA-CR 18-0501 (App. 7/30/2019).

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MEDICAL MARIJUANA



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SMOKING MEDICAL MARIJUANA IN PUBLIC

- In general, person may be arrested & prosecuted for smoking marijuana while in a car, if car is in public, even with MM card.
- Even though AMMA broadly immunizes qualifying patients from arrest or prosecution on marijuana offenses, MM patients may not smoke marijuana “in any public place”.
 - Public place = place frequented by general public.
 - Interior of vehicle is not separate/distinct from the location in which it found

State v. Tagge, CR2015-113021-001 (May 9, 2019).

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UPDATE

Intoxilyzer 9000



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INTOXILYZER 9000

- ◉ In use in several jurisdictions already
- ◉ Will be phased in across AZ
- ◉ We will still have Intoxilyzer 8000s also for about 5 years
 - Defense will likely try to use them against each other
 - Not too many differences
 - CMI states they are both accurate to within 3%
 - Still have calibrations & safeguards

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INTOXILYZER 9000 - DIFFERENCES

- ◉ 90 Day and 31 Day Checks Are Combined into one check
 - Will be conducted every 31 days
 - Will include the calibration check
 - Will be a new form(I-2) - **be sure to disclose**
- ◉ Instrument is extremely automated for the Officer
- ◉ Much easier to blow into
- ◉ Will force officer to conduct a proper 15-minute deprivation period

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DOCUMENTATION FOR INTOX 9000

- ◉ Breath Test Print Card
- ◉ Operator checklist [form I-1]
- ◉ 31- day check [form I-2](no 90-day check)
- ◉ Yearly maintenance check
- ◉ Other maintenance records are available for defense inspection from the DPS lab
- ◉ Officer's card
- ◉ Documentation for 8000s will stay the same

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TRIVIA

- What was the first breath testing instrument called?
- A breathalyzer
- An alcohol finder
- A boozecalc
- A drunkometer

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TRIVIA

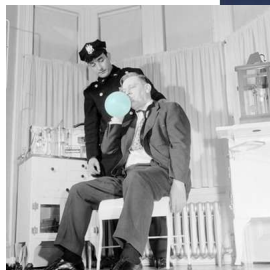
- What was the first breath testing instrument called?
- A breathalyzer
- An alcohol finder
- A boozecalc
- **A drunkometer**

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BREATH ALCOHOL ANALYSIS

DIRECT OXIDATION

- Drunkometer
- Invented in 1938 - Rolla Harger
- Used colorimetric analysis
 - Potassium chromate, silver nitrate, and sulfuric acid
 - Turns from yellow to green
 - Officer compares color change to a chart - later instrument made the comparison itself



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BLOOD TUBE RECALL UPDATE

- Catalog number: 367001
- Lot number: 8187663
- Expiration Date: 7/31/2020



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BLOOD TUBE RECALL UPDATE

- Manufacturer recalled a lot with 247,000 tubes
- Turns out only 300 of the tubes did not contain the chemicals
- 199 of these were received by one client & returned
- 73 were identified by a certain state lab & returned
- That left only 28 tubes unaccounted for

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HOT TOPICS

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COVID-19 AND TRAFFIC

- ◉ Overall DUIs & Traffic citations are down
- ◉ Some departments enforcing less traffic offenses
- ◉ Per National Safety Council fatal crashes per million miles of driving are up dramatically
- ◉ Different than other recessions where traffic was generally safer due to less traffic
 - Fatalities have double in some places
 - Many cases of excessive speeding
 - Average speeds more than double in some cities
 - Many drivers are flouting traffic laws
 - More drag racing
 - Phone usage while driving is up (more than 30%)

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COVID-19 AND DUI

- ◉ Fewer citations most places
 - Bars closed
 - More people staying home
 - Some patrol officers are avoiding making stops
- ◉ Very few DUI checkpoints across the country
 - Saturation patrols instead
- ◉ Breath vs. blood testing
- ◉ Officer safety
 - Masks - odor of alcohol/drug; ID issues
 - DRE exams
- ◉ Many MVD and ignition interlock services are appointment only

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COVID-19 AND DUI OTHER POTENTIAL LONG-TERM IMPACTS

- ◉ Folks are drinking & using drugs more
- ◉ Results in more alcoholics & addicts
- ◉ States are allowing more take-out alcohol at restaurants

- ◉ May result in more DUIs after the pandemic

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COVID-19 AND THE COURTS

Addressed Differently in Different Courts:

- Most have suspended all or some trials
- Some finished on-going trials others did not
- Many are suspending deadlines
- Video/phone proceedings
- Increased pretrial release
- Social distancing/screenings
- Masks

Case Back-Logs

Speedy Trial Issues

Plea Bargains

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WHAT ARE PROSECUTORS DOING

- Many are relaxing pretrial release policies
- Some are not charging certain low level offenses
- Many are offering better plea bargains
- Brooklyn's District Attorney is declining to prosecute low-level offenses that don't jeopardize public safety.
- The Seattle District Attorney is only filing charges in exceptionally violent cases and continuing all other pending felonies.

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AZ SUPREME COURT ORDER

- Rule 8 time excluded until September 30, 2020
- No more than 30 allowed in a courtroom or other part of court at one time (some courts it is less)
- Courts must implement CDC & US Dept. of Labor social distancing & sanitation measures
- No notice change of judge and fewer juror peremptory strikes thru 12/30/2020
- Extending time limits for prelim and probation hrgs.
- Judges are to liberally grant COVID continuances
- Must wear masks- can allow limited exceptions
- More video conferencing allowed
- May use recorded record of proceedings instead of court reporter - except grand juries

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DUI HOT TOPICS/TRENDS

- ◉ Prescription DUI cases
- ◉ Fentanyl
- ◉ Meth use has increased
- ◉ Seeing cocaine again
 - Manufacture and use are up

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MARIJUANA

- ◉ More states are legalizing
- ◉ Emerging warnings
 - Lung cancer/disease
 - Pregnancy & adolescence
 - No amount is known to be safe
 - Addiction
- ◉ Marijuana continues to get stronger
- ◉ Vaping THC is leading to serious lung damage; FDA has issued warnings

**I SCORED
HIGH
ON MY
DRUG TEST**

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